## UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

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## DEFENDANT KPMG-HK'S MOTION FOR LEAVE TO FILE UNDER SEAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS AND CONFIDENTIAL DOCUMENTS

Pursuant to Federal Rule of Civil Procedure 26 and Local Rule 7.2, Defendant KPMG, a Hong Kong partnership ("KPMG-HK"), seeks an order allowing it to file under seal:

- 1. Portions of KPMG-HK's **Memorandum of Law** in Support of Its Motion to Dismiss the Third Amended Complaint ("TAC"), and
- 2. **Exhibits J and Q** to the Declaration of Jeff Goldman in Support of Defendant KPMG-HK's Motion to Dismiss the TAC.

In support of this motion, KPMG-HK states as follows:

1. Plaintiffs have sought leave to file the TAC under seal, with a redacted version filed publicly. According to Plaintiffs, the TAC is to be filed under seal because it includes information drawn from documents that Miller obtained through discovery from persons that have designated the previously-impounded information as confidential (the "designating persons"). Docket no. 167. Miller has represented to the Court that these documents are subject to protective orders and have been designated "Confidential" or "Highly Confidential." *Id*.

- 2. KPMG-HK has discussed the redacted parts of the TAC in its motion to dismiss. To preserve the confidentiality of information in the TAC that was filed under seal, we have redacted that information from our memorandum of law as filed publically.
- 3. In addition, KPMG-HK is submitting with its motion to dismiss two documents identified and discussed in redacted portions of the TAC. KPMG-HK independently is designating those documents as "highly confidential" under the Confidentiality Order entered by this Court on August 28, 2012 (docket no. 3) and is requesting permission to file those documents under seal.
- 4. Permission from this Court to file under seal is warranted for the reasons relied upon by the Court in its order dated April 25, 2014 (docket no. 134). That order concerned KPMG-HK's memorandum of law in support of its previous motion to dismiss and the same two documentary exhibits subject to this motion.
- 5. In addition, permission to file copies of the two referenced documents under seal is warranted because they evidence communications that were intended to be and were designated as confidential at the time they were made, and which remain non-public.
- 6. Pursuant to Local Rule 7.2(a), these materials should be impounded until further order of the Court, or until a time acceptable to the designating persons. As to the two documents that KPMG-HK is designating "Highly Confidential," the materials should remain impounded unless and until KPMG-HK and the recipients of the communications inform the Clerk otherwise.
- 7. Counsel for KPMG-HK has conferred with counsel for Plaintiffs, who have represented that Plaintiffs do not oppose this motion.

For these reasons, KPMG-HK respectfully requests that the Court grant this motion for leave to file under seal.

/s/ Steven W. Hansen

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Dated: May 13, 2015

## **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed through the ECF system to be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and that paper copies will be sent to any person indicated on ECF as a non-registered participant on May 13, 2015.

/s/ Jeff Goldman, BBO #660870